

Bhogale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3070 OF 2021**

Manjula Arun Sawtadkar and ors.	.. Petitioners
vs.	
State of Maharashtra and ors.	.. Respondents

Mr. Dhairyasheel Vijay Sutar for the Petitioners.
Smt. S.D. Vyas, 'B' Panel-AGP for the Respondent-State.

**CORAM : M.S.KARNIK, J.
DATE : JULY 20, 2021
(THROUGH V.C.)**

P.C.

Heard learned counsel for the parties.

2. The order under challenge is dated 16.06.2021 passed by the Sub-Divisional Officer ('SDO' for short), Khed cancelling the mutation entry No.13971. It is the contention of learned counsel for the Petitioners that the Appellants before the SDO were not even the parties to the Suit, Appeal or the execution proceedings. Pursuant to partition suit filed by one of the six sisters, the Appellate Court was pleased to decree the suit and effect the partition. Even the execution was completed by the Tahasildar on 24.02.2021 and the parties were put in the possession of their respective shares. It is the contention of learned counsel for the Petitioners that by the impugned order, the SDO has virtually allowed the Appeal at the instance of the purchasers who are not even the parties to the proceedings at any stage. According to

him, as a result of this order the Appellants before the SDO are now obstructing the possession of Petitioners and thereby completely defeating the decree passed by the Competent Civil Court. This according to him is impermissible.

3. Learned AGP pointed out that against the order passed by the SDO there is a remedy of filing an Appeal before the Additional Collector under Section 247 of the Maharashtra Land Revenue Code, 1966. It is the apprehension of learned counsel for the Petitioners that the Collector may not be in a position to decide the objection of the Petitioners that the Appeal before SDO itself is not maintainable at the behest of the purchasers of the property from the co-sharers.

4. In my opinion, the Petitioners have an alternate efficacious remedy of filing an Appeal before the Additional Collector, as the Additional Collector can always go into the question whether the Appeal at the behest of the purchasers (Appellants in Appeal before SDO) was maintainable along with other contentions which may be raised on merits by the Petitioners.

5. To enable the Petitioners to file appropriate proceedings challenging the impugned order, in the interest of justice, for a period of four weeks from today, the impugned order dated 16.06.2021 shall remain stayed.

6. It is made clear that the Additional Collector shall decide the Appeal on its own merits without being influenced by any observations made by me.

7. All contentions are kept open.

8. Writ Petition is disposed of.

(M.S.KARNIK, J.)